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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT:	MILLER ET AL.)	EXAMINER:	Fetsuga, R.
)		
SERIAL NUMBER:	10/713,494)	ART UNIT:	3751
)		
FILING DATE:	NOVEMBER 14, 2003)		
)		
TITLE:	Bathing Apparatus)		
)		
)		

Mail Stop: APPEAL BRIEF
Board of Patent Appeals and Interferences
P.O. Box 1450
Alexandria, Virginia 22313-1450

APPEAL BRIEF

Dear Sir:

In regard to the above referenced application, Appellant submits this Appeal Brief.

I. REAL PARTY IN INTEREST

The real party in interest is Little Ruggers, LLC, a limited liability corporation of the State of Colorado, United States of America. Little Ruggers LLC's right to take action in the subject application was established by virtue of the following chain of title:

1. An Assignment from the inventors, Paulette J. Miller and Peggy Lee Allen to Little Ruggers LLC, recorded at Reel 014708, Frame 0458 on November 14, 2003.

II. RELATED APPEALS AND INTERFERENCES

The undersigned legal representative of Appellant hereby confirms that there are no known appeals or interferences relating to the present application, or any parent application, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF THE CLAIMS

Claims 1-9 and 11-18 are pending in the application. Of the above claims 6-8 and 12-18 have been withdrawn from consideration in response to a restriction requirement. No claims have been allowed. Claims 1-5, 9 and 11 stand rejected under a final Office Action mailed September 12, 2005.

The rejections of each of the claims 1-5, 9 and 11 are being appealed.

IV. STATUS OF THE AMENDMENTS

Claims 1 and 11 were amended by Applicants' August 5, 2005 response to the first substantive Office Action mailed May 9, 2005. The amendment to Claims 1 and 11 has been entered and is reflected on the Claims Appendix set forth in section VIII below. Claims 2-5 and 9 are pending as originally filed. Certain amendments to the specification were included with the Applicants' August 5, 2005 response. The amendments to the specification were entered by the Examiner without objection. The amendments to the specification are shown in section XI below. No amendments have been proposed subsequent to final rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The present invention is a bathing apparatus for use in a bathing vessel typically by a parent bathing an infant. Claim 1 is the only pending independent claim. Claim 1 does include means plus function elements as permitted by 35 U.S.C. §112, sixth paragraph. The means plus function elements of Claim 1 are identified and the structure described in the specification corresponding to the claimed function is disclosed below.

Applicants' Claim 1 states in its entirety:

*"1. A bathing apparatus for use in a bathing vessel comprising:
a flexible sheet;*

*attachment means for attaching the flexible sheet to a surface of the bathing vessel such that the flexible sheet is substantially in contact with the bottom surface of the bathing vessel; and
connecting means removably connecting the attachment means to the flexible sheet."*

The flexible sheet element of Claim 1 is identified as reference numeral 2 of Figure 1. The

flexible sheet element is described as, “an appropriately sized flexible sheet 2 upon which an infant or other person will be sat for bathing. The flexible sheet 2 is preferably constructed of terry cloth or a similar non-slip and machine-washable material.” (See amended specification, paragraph 17)

The second element of Claim 1 is, “attachment means for attaching the flexible sheet to a surface of the bathing vessel such that the flexible sheet is substantially in contact with the bottom surface of the bathing vessel.” The attachment means is a means plus function element as permitted by 35 U.S.C. §112, sixth paragraph. The following structures are disclosed in the specification which correspond to the attachment means:

- a) suction cups
- b) plastic coated magnets
- c) adhesive pads
- d) padded weights
- e) Velcro™ fasteners
- f) clips

Support for the various structures which correspond to the attachment means is found in paragraph 17 of the amended specification. Further support for the attachment means includes the suction cups of Fig. 1 identified with reference numeral 3.

A third element of Claim 1 is, “connecting means removably connecting the attachment means to the flexible sheet.” The connecting means is a means plus function element as permitted by 35 U.S.C. §112, sixth paragraph. The structure corresponding to the connecting means includes a strap connected into a securing loop. As is stated at paragraph 17 of the amended specification: *“the strap can be simply tied to form a loop, or the loop can be formed by means of closures 7. In Fig. 1, the closures 7 are depicted as snaps; however other closures such as hook and loop fasteners, buttons, Velcro™ or clips could be used to secure the strap 4 in a loop configuration.”*

One key feature of Applicants’ invention as claimed in Claim 1 is that the connecting means *removably* connects the attachment means to the flexible sheet. This removable connection facilitates necessary routine maintenance of the bathing apparatus. In particular, *“periodically, when washing of the bathing apparatus 1 is necessary, the attachment means 3 can be removed from the flexible sheet 2 by untying the loop of strap 4 or disconnecting the closures 7 and removing the strap 4 from the slots 6. After removal of the attachment means 3, the flexible sheet 2 can be hand*

laundered or washed in a typical household washing machine.” (Amended specification, paragraph 20) Removable attachment means is a novel and necessary feature since rubber or plastic attachment means such as suction cups might be damaged by machine washing and attachment means such as plastic coated magnets, padded weights or clips might damage a washing machine.

A second key feature of Applicants’ invention is that the attachment means attach the flexible sheet substantially in contact with the bottom surfaces of the bathing vessel.

VI. GROUNDS FOR REJECTION TO BE REVIEWED ON APPEAL

Claim 1-5 and 9 stand rejected under 35 USC § 102(b) as being anticipated by Stevens, U.S. Patent No. 6,353,943.

Claims 1-5, 9 and 11 stand rejected under 35 USC § 103(a) as being unpatentably obvious over Stevens, U.S. Patent No. 6,353,943 in view of Kiester, U.S. Patent No. D370,528.

VII. ARGUMENT

A. Summary of the Argument

Each of Applicants’ claims 1-5 and 9 stand rejected under 35 U.S.C. §102(b) as being anticipated by Stevens. A properly supported anticipation rejection requires that the prior art reference disclose every limitation of the claimed invention. Stevens does not disclose the third element of Applicants’ claim 1; connecting means removably connecting the attachment means to the flexible sheet. In addition, Stevens does not disclose the functional limitation of claim 1, that the attachment means attach the flexible sheet substantially in contact with the bottom surface of the bathing vessel. Claims 2-5 and 9 depend from claim 1. Accordingly, Applicants submit that claims 1-5 and 9 have been improperly rejected under 35 U.S.C. §102(b).

Each of Applicants’ claims 1-5, 9 and 11 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Stevens in view of Kiester. Kiester arguably shows connecting means removably connecting an attachment means. However, there is no teaching, motivation or suggestion in the prior art relied upon by the Examiner or within the ordinary knowledge of those skilled in the art to combine the references. Therefore, the Examiner has failed to demonstrate an essential element needed to support a *prima facie* obviousness rejection of the pending claims. In addition, neither reference discloses the functional limitation of claim 1, that the attachment

means attach the flexible sheet substantially in contact with the bottom surface of the bathing vessel. Accordingly, Applicants submit that claims 1-5, 9 and 11 have been improperly rejected under 35 U.S.C. §103(a). Applicants' arguments are set forth in detail below.

B. The Rejection of Claims 1-5 and 9 under 35 U.S.C. § 102(b)

1. Statement of the Relevant Law Pertaining to 35 U.S.C. § 102(b).

The Court of Appeals for the Federal Circuit has stated that anticipation requires the presence in a single prior art reference of each and every element of the claimed invention. *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458 (Fed. Cir. 1984); *Alco Standard Corp. v. Tennessee Valley Auth.*, 1 USPQ2d 1337, 1341 (Fed. Cir. 1986). "There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention." *Scripps Clinic v. Genentech Inc.*, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991, citations omitted). "To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention either expressly or inherently." *Atlas Powder Co. v. Ireco Inc.*, 190 F.3d 1342, 1346 (Fed. Cir. (1999) (quoting *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997)).

2. The Rejection of Claim 1-5 and 9 under 35 USC § 102(b) is improper.

Claims 1-5 and 9 stand rejected under 35 U.S.C. §102(b) as being anticipated by Stevens. Applicants' claim 1 recites two distinct structures for connection of the flexible sheet element to the bottom surface of a bathing vessel: an attachment means and a connecting means. A connecting means is specifically limited to structures which *removably* connect the attachment means to the flexible sheet. The limitation that the connecting means removably connects the attachment means to the flexible sheet distinguishes Applicants' invention from Stevens.

Stevens teaches two structures which are analogous to Applicants' attachment means; suction cups 54 of Figs. 1-4 and a Velcro™ style hook plate 80 as illustrated in Fig. 5. Stevens does not teach any structure which corresponds to Applicants' connecting means. In addition, any structure in Stevens which might be considered analogous to the connecting means certainly does not *removably* connect the attachment means to the flexible sheet. In particular, at column 4, line 32 of the Stevens patent, it is stated:

“As depicted in Fig. 3, suction cup fasteners 54 each include a cup body 74 and a stem or post 75. Post 75 passes through a hole or perforation 71 in fabric mat 52 and is attached to the mat by any means known in the art. For example, post 75 may be rigidly secured to a backing element or flange 72 by heat fusion or ultrasonic welding. Additionally, a grommet or under reinforcing device not illustrated may be disposed about perforation 71 as will readily occur to those skilled in the cloth arts.”

If the suction cup of Stevens is merely passed through a hole or perforation in the fabric mat, no separate connecting means is taught and this limitation of Applicants' claim 1 is not disclosed. The hole or perforation in the Stevens fabric mat is not a separate structural element as recited in claim 1 and disclosed in Applicants' specification.

Alternatively, if the hole or perforation is considered to be analogous to the connecting means of Applicants' invention, such connecting means does not removably connect the attachment means to the flexible sheet. On the contrary, Stevens teaches several methods of permanently affixing the suction cup to the fabric mat including the rigid securing of the cup to a backing element or flange by heat fusion or ultrasonic welding. Thus, there is no teaching expressly stated or implicit in the Stevens reference directed toward removable attachment means connected to a flexible sheet by connecting means. The fact that the Stevens patent does not teach removable connection is emphasized by claim 7 of Stevens which includes the following limitation: *“washing the removed mat and suction cups in a clothes washing machine.”*

The alternative attachment means of Stevens, a Velcro™ hook plate 80 as shown in Fig. 1 is described as being, “sewn onto fabric mat 52.” (Column 4, line 56) Applicants submit that the sewn connection of a Velcro™ hook plate to a flexible sheet does not teach or suggest Applicants' connecting means as this element is described in Applicants' specification and claims. To the extent however that a sewn connection is determined to be a separate connecting means element, it does not removably connect the attachment means to the flexible sheet. Although a sewn connection can be broken, an irrevocable action such as cutting threads to

remove the attachment means is well outside the scope of a “connecting means removably connecting the attachment means to the flexible sheet.” The attachment means (Velcro™) can not be re-attached if the sewn connection is cut.

Stevens, furthermore does not disclose the functional limitation of claim 1, that the attachment means attach the flexible sheet substantially in contact with the bottom surface of the bathing vessel. In particular, Stevens states at column 2, line 28, “*a rectangular piece of terry cloth is draped or lain over the side or lip of a bathtub....Generally, it is contemplated that the terry cloth is fastened to an outer surface of the tub on one side of the lip or rim and to an inner surface of the tub on an opposite side of the lip.*”

In addition, at column 3, line 1 of Stevens, it is stated, “*In the present application, the device is disposed in a substantially dry location above the bath water level.*” Applicants’ invention on the contrary is designed and claimed to be attached to a bottom surface of the bathing vessel below the water level. This functional limitation is incorporated into claim 1. This functional limitation is consistent with the quite different manner of use for Applicants’ invention versus the Stevens device. Applicants’ invention is designed to provide a comfortable non-slip surface under an infant or other person during a bath. The Stevens device is designed to provide a safety grip for grasping or leaning upon when entering or exiting a bathtub or sitting upon prior to entering a tub for the purpose of bathing. (Column 2, lines 14-20).

C. The Rejection of Claims 1-5, 9 and 11 under 35 USC § 103(a)

1. Statement of the Relevant Law Pertaining to 35 USC § 103(a)

The proper standard for rejection of claims under 35 U.S.C. § 103(a) is whether the differences between the claimed subject matter and the prior art are such that the claimed subject matter would have been obvious to one of ordinary skill in the art at the time the invention was made. In evaluating whether or not an invention is obvious, inquiry into the following three factors must be made:

1. The scope and content of the prior art;
2. The level of ordinary skill in the prior art; and
3. The differences between the claimed invention and the prior art.

See *Graham v. John Deere Co.*, 383 U.S. 1; 86 S. Ct. 684; 15 L. Ed. 2d 545; 148 U.S.P.Q.

(BNA) 459 (1966).

The Examiner bears the burden of presenting an unrebutted *prima facie* case of obviousness in order to reject claims under 35 U.S.C. § 103(a). See *In re Deuel*, 51 F.3d 1552, 1557; 34 U.S.P.Q.2D (BNA) 1210 51 F.3d 1552 (Fed. Cir.1995). Thus an applicant on appeal to the Board may overcome the 35 U.S.C. § 103(a) rejection by showing that the Examiner provided insufficient evidence of *prima facie* obviousness.

A proper rejection under the first *Deere* factor, the scope and content of the prior art, requires that there must be some teaching, motivation, or suggestion in the prior art to combine the references at the time the invention was made. See *C.R. Bard, Inc. v. M3 Sys. Inc.*, 157 F.3d 1340, 1351; 48 U.S.P.Q.2d (BNA) 1225 (Fed. Cir. 1998) See also *Golight, Inc. v. Wal-Mart Stores, Inc.*, 355 F.3d 1327; 69 U.S.P.Q.2D (BNA) 1481 (Fed Cir. 2004). Evidence of the motivation, suggestion or teaching to combine the references may be found "in explicit or implicit teachings within the references themselves, from the ordinary knowledge of those skilled in the art, or from the nature of the problem to be solved." *WMS Gaming, Inc. v. International Game Tech.*, 184 F.3d 1339, 1355; 51 U.S.P.Q.2D (BNA) 1385 (Fed. Cir. 1999). The test for an implicit showing is "what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art." *In re Kotzab*, 217 F.3d 1365, 1370; 55 U.S.P.Q.2D (BNA) 1313 (Fed. Cir. 2000).

Irrespective of the source of the teaching, suggestion, or motivation, the Examiner must make an objective showing that would lead to the combination of references. See *In re Fine*, 837 F.2d 1071, 1074; 5 U.S.P.Q.2D (BNA) 1596 (Fed. Cir. 1988). See also *Iron Grip Barbell Co. v. USA Sports, Inc.*, 392 F.3d 1317; 73 U.S.P.Q.2d (BNA) 1225 (Fed. Cir. 2004). The Examiner must "identify specifically the principle, known to one of ordinary skill, that suggests the claimed combination" at the time the invention was made. *In re Rouffet*, 149 F.3d 1350, 1359; 47 U.S.P.Q.2D (BNA) 1453 (Fed. Cir. 1998). Mere identification of each individual element of the claimed invention in the prior art "without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability--the essence of hindsight." *In re Dembiczak*, 175 F.3d 994, 999; 50 U.S.P.Q.2D (BNA) 1614 (Fed. Cir. 1999). See also *Iron Grip Barbell Co. v. USA Sports, Inc.*, 392 F.3d

1317; 73 U.S.P.Q.2d (BNA) 1225 (Fed. Cir. 2004). It is especially important to adhere to the requirement for a suggestion, motivation, or teaching in the prior art in the case of simple inventions because in such cases the simplicity of the invention may cause one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher." See *In re Dembiczak*, 175 F.3d at 999; 50 U.S.P.Q.2D (BNA) at 1620 (quoting *W.L. Gore & Assoc., Inc. v. Garlock, Inc.* 721 F.2d 1540, 1553; 220 U.S.P.Q. (BNA) 303 (Fed. Cir. 1983)). As the Federal Circuit has noted, "simplicity is not inimical to patentability." *In re Oetiker*, 977 F.2d 1443, 1447; 24 U.S.P.Q.2D (BNA) 1443 (Fed. Cir. 1992).

The showing of the motivation, suggestion, or teaching to combine must be "clear and particular," requiring the presentation of factual findings. *In re Dembiczak*, 175 F.3d at 999, 50 U.S.P.Q.2D (BNA) 1614. Such findings must be made even when changes from the prior art are minor or simple. See *In re Chu*, 66 F.3d 292, 298; 36 U.S.P.Q.2D (BNA) 1089 (Fed. Cir. 1995).

Broad conclusory statements about the teachings of the references, on their own, are never sufficient to satisfy this requirement. See *In re Dembiczak*, 175 F.3d at 999, 50 U.S.P.Q.2D (BNA) 1614.

Finally, there can be no suggestion, motivation, or teaching to combine if one reference teaches away from its combination with another reference. See *W.L. Gore & Assoc., Inc. v. Garlock, Inc.* 721 F.2d 1540, 1550; 220 U.S.P.Q. (BNA) 303 (Fed. Cir. 1983). A reference teaches away when:

"a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant ... [or] if it suggests that the line of development flowing from the reference's disclosure is unlikely to be productive of the result sought by the applicant."

In re Gurley, 27 F.3d 551, 553; 31 U.S.P.Q.2D (BNA) 1130 (Fed. Cir. 1994).

In recognition of the burden upon an examiner to establish a *prima facie* case of obviousness under 35 USC § 103(a), three basic criteria are set forth in the MPEP to guide examiners. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation

of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. (MPEP 2143)

2. The rejection of claims 1-5, 9 and 11 under 35 USC §103(a) is improper because the prior art relied upon by the examiner contains no motivation to combine references.

The combined teachings of Stevens and Kiester fail to meet the first criteria of a prima facie obviousness rejection. Arguably the combined references do teach each element of claim 1. In particular, Fig. 5 of the Kiester design patent appears to show attachment means (a suction cup) and connecting means for removably connecting the attachment means to a flexible sheet. In particular, the Kiester design patent shows a strap which appears to have snap fittings for connecting the suction cup to the sheet. Applicant notes however that there is no figure included with the Kiester design patent which expressly shows that the connection is removable.

To support the 35 U.S.C. §103(a) rejection, there must be some suggestion or motivation either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to combine the reference teachings. The Examiner states at page 3 of the final Office Action, “although the connecting means of the Stevens bathing apparatus does not include a strap, as claimed, attention is directed to the Kiester reference which discloses an analogous bathing apparatus which further includes connecting means having a strap (figure 5). Therefore, in consideration of Kiester, it would have been obvious to one of ordinary skill in the connecting means art to associate a strap with the Stevens bathing apparatus in order to facilitate attachment.” The Examiner merely concludes that this combination is obvious, rather than presenting in detail the evidence of the motivation for the combination.

The Examiner possibly relies upon Stevens for motivation to combine these references. In particular, the Examiner states at page 4 of the final Office Action, “Stevens expressly “motivates” one to utilize different attachment means. (Emphasis in original)” Note again column 4, lines 32-39 in Stevens. Applicants respectfully disagree that motivation to combine these references can be found in the Stevens patent. Stevens may teach alternative attachment means but the alternatives are not interchangeable or suitable to be connected and disconnected from the flexible sheet as suggested by the Examiner. The passage cited by the Examiner in support of motivation (Stevens col. 4, lines 32-39) is extensively quoted on page 6 above and

actually concerns various method of rigidly (not releasably) securing a suction cup to a fabric sheet, such as heat fusion or ultrasonic welding. In fact, the passage relied upon for motivation teaches away from a releasable connecting means.

The Examiner's unsupported conclusion with respect to motivation to combine is; "therefore in consideration of Kiester it would have been obvious to one of ordinary skill in the connecting means art to associate a strap with the Stevens bathing apparatus in order to facilitate attachment". Applicants submit that the Examiner has reached a flawed conclusion concerning the motivation to combine merely because Applicants' invention is so simple. The Examiner's conclusion is contrary to the teaching of the Federal Circuit with respect to the clear and particular factual findings of motivation, suggestion or teaching to combine which are especially important when dealing with a relatively simple invention.

3. The rejection of claims 1-5, 9 and 11 under 35 U.S.C. §103(a) is improper because the prior art does not teach or suggest all of the claim limitations.

As discussed above with respect to the Examiner's anticipation rejection of claims 1-5 and 9 under 35 U.S.C. §102(a), the Kiester reference does not teach or suggest the functional limitation of claim 1, that the attachment means attach the flexible sheet substantially in contact with the bottom surface of the bathing vessel. Similarly, Kiester does not teach or suggest this limitation. It is clear from the illustrations accompanying the design patent and its title "Bathtub Mounted Infant Support" that the Kiester device is a sling which is designed and configured to support an infant at or above the water level, some distance above the bottom surface of the bathing vessel. Applicants' note in the background art portion of the present specification that,

"Several sling type infant bathing devices are also known in the prior art. The sling type devices consist of a fabric sheet or platform attached to or suspended across the bathing vessel. A key feature of the sling type bathing devices is that these devices are designed to suspend the baby at or above the waterline during a bath. A typical sling type device is taught in Keister, U.S. Patent Number 5,491,850, where a hammock type support system installable in a conventional bathtub is specifically designed to support an infant in a prone position at or above the water level during a bath. The infant being bathed in a sling type device is held safely above the water,

but is unfortunately deprived of the ability to splash and play in the bathwater during a bath."

The Examiner does not rely upon the 5,491,850 utility patent issued to Kiester discussed above in formulating his obviousness rejection. It is however apparent from an examination of the utility patent that it relates to the same device as it is shown on the nearly contemporaneously filed and issued design patent. Claims 2-5, 9 and 11 depend from Claim 1 and are allowable for the reasons set forth above.

VIII. CLAIMS APPENDIX

1. (Previously Amended) A bathing apparatus for use in a bathing vessel comprising:
a flexible sheet;
attachment means for attaching the flexible sheet to a surface of the bathing vessel such that the flexible sheet is substantially in contact with the bottom surface of the bathing vessel; and
connecting means removably connecting the attachment means to the flexible sheet.
2. (Original) The bathing apparatus of claim 1 wherein the flexible sheet further comprises a non-slip surface.
3. (Original) The bathing apparatus of claim 1 wherein the flexible sheet is manufactured from a machine washable fabric.
4. (Original) The bathing apparatus of claim 1 wherein the flexible sheet is a rectangle.
5. (Original) The bathing apparatus of claim 4 wherein the attachment means are connected to the flexible sheet at each corner of the rectangle
6. (Withdrawn) The bathing apparatus of claim 1 wherein the flexible sheet further comprises a padded portion.
7. (Withdrawn) The bathing apparatus of claim 6 wherein the padded portion is centrally located with respect to the flexible sheet.
8. (Withdrawn) The bathing apparatus of claim 6 wherein the padded portion is located around a perimeter of the flexible sheet.
9. (Original) The bathing apparatus of claim 1 wherein the attachment means is a suction cup.

10. (Cancelled)
11. (Previously Amended) The bathing apparatus of claim 1 wherein the connecting means is a flexible strap formed in a loop.
12. (Withdrawn) A method of manufacturing a bathing apparatus for use in a bathing vessel comprising:
 - providing a flexible sheet;
 - providing an attachment means;
 - removably connecting the attachment means to the flexible sheet; and
 - sizing the flexible sheet such that the flexible sheet is substantially in contact with a surface of a bathing vessel when the attachment means is attached to the surface of the bathing vessel.
13. (Withdrawn) The method of claim 12 further comprising making the flexible sheet from a machine washable fabric.
14. (Withdrawn) The method of claim 12 further comprising making the flexible sheet from a material with a non-slip surface.
15. (Withdrawn) The method of claim 12 further comprising making the flexible sheet with a padded portion.
16. (Withdrawn) The method of claim 15 wherein the padded portion is centrally located with respect to the flexible sheet.
17. (Withdrawn) The method of claim 15 wherein the padded portion is located around a perimeter of the flexible sheet.
18. (Withdrawn) The method of claim 12 wherein the attachment means is a suction cup.

19. (Cancelled)
20. (Cancelled)

IX. EVIDENCE APPENDIX

Enclosed please find copies of the following references relied upon by the Examiner as to the grounds of rejection to be reviewed upon appeal:

1. Stevens, U.S. Patent No. 6,353,943 B1;
2. Kiester, Des. 370,528; and
3. Kiester, U.S. Patent No. 5,491,850.

X. RELATED PROCEEDINGS APPENDIX

None

XI. AMENDED SPECIFICATION APPENDIX

Enclosed please find a copy of certain paragraphs of the specification as amended August 5, 2005.

XII. CLOSING REMARKS

For the foregoing reasons, Applicants submit that the rejection of claims 1-5, and 9 pursuant to 35 USC § 102(b) is improper, that the rejection of claims 1-5, 9 and 11 pursuant to 35 U.S.C. §103(a) is improper and that claims 1-5, 9 and 11 are therefore patentable. Accordingly, Applicant respectfully requests that the rejection of the Examiner be reversed.

Enclosed is a check in the amount of \$250.00 to cover the fee associated with the filing of this Appeal Brief. The undersigned hereby authorizes the charge of any required fees not included or any deficiency of fees submitted herewith to be charged to deposit account number 19-5117.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jim Brown', is written over a horizontal line.

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XI. AMENDED SPECIFICATION APPENDIX

AMENDMENTS TO THE SPECIFICATION

Please replace paragraph [17] of the specification with the following amended paragraph:

--Fig. 1 illustrates a preferred embodiment of the bathing apparatus 1. The bathing apparatus 1 includes an appropriately sized flexible sheet 2 upon which an infant or other person will be sat for bathing. The flexible sheet 2 is preferably constructed of terrycloth or a similar non-slip and machine washable material. Non-slip is defined for the purposes of this disclosure as a material which has surface characteristics which render a wet infant placed upon the non-slip material less likely to slide than if placed on an unprotected porcelain bathing vessel surface. The flexible sheet 2 is secured for use to the bottom of a sink, bathtub or other vessel by an attachment ~~structure~~means 3. In Fig. 1 the attachment ~~structure~~means 3 is depicted as several suction cups, but other types of attachment ~~structure~~means such plastic coated magnets, adhesive pads, padded weights, Velcro™ or clips could be utilized as well. The attachment ~~structure~~means 3 is affixed to the flexible sheet 2 by means of a ~~removable attachment device~~connecting means which can be a strap 4. The strap 4 is looped through a channel 5 in the attachment ~~structure~~means 3 and further looped through a pair of slots 6 in the flexible sheet 2. The strap 4 is connected into a securing loop. The strap can be simply tied to form a loop, or the loop can be formed by means of closures 7. In Fig. 1 the closures 7 are depicted as snaps, however, other closures such as hook and loop fasteners, buttons, Velcro™ or clips could be used to secure the strap 4 in a loop configuration.—

Please replace paragraph [19] of the specification with the following amended paragraph:

--Fig. 2 depicts the bathing apparatus 1 as described above in use in a typical kitchen sink. As shown in Fig. 2, the flexible sheet 2 of the bathing apparatus 1 is sized appropriately and attached such that the flexible sheet 2 is substantially in contact with a surface of the bathing vessel, typically the bottom surface. The attachment ~~structure~~

means 3, which is depicted as a suction cup, facilitates the efficient placement and removal of the bathing apparatus 1 when necessary as the bathing vessel is used for purposes other than bathing an infant. Although not depicted in Fig. 2, the bathing apparatus 1 can alternatively be attached to a countertop or a floor to provide a safe no slip surface for drying an infant or child after her bath.—

Please replace paragraph [20] of the specification with the following amended paragraph:

--Periodically, when washing of the bathing apparatus 1 is necessary, the attachment ~~structures~~-means 3 can be removed from the flexible sheet 2 by untying the loop of strap 4 or disconnecting the closures 7 and removing the strap 4 from the slots 6. After removal of the attachment ~~structures~~-means 3, the flexible sheet 2 can be hand laundered or washed in a typical household washing machine.--